

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX**

WEST PENN ALLEGHENY SENIOR CARE t/d/b/a
THE RESIDENCE ON FIFTH¹

Employer

and

Cases 6-RC-12333 and
6-RC-12338

DISTRICT 1199P, SERVICE EMPLOYEES
INTERNATIONAL UNION, AFL-CIO, CLC

Petitioner

**REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTIONS AND ORDER
SEVERING CASES**

The Employer, West Penn Allegheny Senior Care t/d/b/a The Residence on Fifth, herein called the Employer, operates a personal care home in Pittsburgh, Pennsylvania, herein called the Employer's facility. The Petitioner, District 1199P, Service Employees International Union, AFL-CIO, CLC, filed the petitions in Cases 6-RC-12333 and 6-RC-12338 pursuant to Section 9(c) of the National Labor Relations Act seeking to represent certain employees of the Employer. On April 2, 2004, these petitions were consolidated pursuant to Section 102.72 of the National Labor Relations Board's Rules and Regulations. A hearing officer of the Board held a hearing and the parties filed timely briefs with me which have been duly considered.

In Case 6-RC-12333, the Petitioner seeks to represent a unit, as amended at the hearing, consisting of all full-time and regular part-time employees, including receptionists, employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding all licensed practical nurses, business office clericals, department heads and all other supervisors and guards as defined in the Act, and all other employees. Although the parties are otherwise in

¹ The Employer's name appears as amended at the hearing.

accord with respect to the scope and composition of the unit, the Employer, contrary to the Petitioner, contends that the Executive Chef/Production Supervisor/Lead Cook, Lawrence Faulkner,² is a supervisory employee.

In Case 6-RC-12338, the Petitioner seeks to represent a unit consisting of all full-time and regular part-time licensed practical nurses employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding all office clerical employees, service and maintenance employees, IntegraCare nurses and guards, professional employees and supervisors as defined in the Act, and all other employees. Although in agreement that the petitioned-for unit constitutes an appropriate unit for purposes of collective bargaining, the Employer, contrary to the Petitioner, contends that the three LPNs employed by the Employer are supervisory employees, and therefore, that the petition should be dismissed.

There are approximately 31 employees in the unit sought by the Petitioner in Case 6-RC-12333 and three employees in the unit sought by the Petitioner in Case 6-RC-12338. There is no history of collective bargaining for any of the employees involved herein.

I have considered the evidence and arguments presented by the parties on these issues. As discussed below, I have concluded that the LPNs at the Employer's facility are not supervisors within the meaning of the Act. Accordingly, I have directed an election in a unit that consists of approximately three employees in Case 6-RC-12338. I have also concluded that the Food Services Production Supervisor is not a supervisor within the meaning of the Act, and I have directed an election in a unit consisting of approximately 31 employees in Case 6-RC-12333.

To provide a context for my discussion on these issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts and reasoning that supports my conclusions on these issues.

² For ease of reference, I will refer to Faulkner's title as the Food Services Production Supervisor.

I. OVERVIEW OF OPERATIONS

Since June 7, 2002, the Employer has operated a 77-bed personal care home³ primarily for seniors with varying degrees of personal care needs.⁴ Currently, the Employer has approximately 49 residents. The facility has five floors, four of which have resident rooms. The first floor is the main floor of the facility on which the main dining room is located. There are no resident rooms on the first floor. The second floor, referred to as the mezzanine, has five resident rooms. The third, fourth and fifth floors each have 25 rooms. Located on the third floor of the facility is a special needs dining room for residents who require their meals to be cut or pureed.

The overall operations of the Employer is the responsibility of Executive Director Rebecca Lingold.⁵ Reporting to Lingold are the following five department directors and the business office manager: Assistant Executive Director and Director of Resident Care Services Kathleen Cassell,⁶ Business Office Manager Sharon Farries, Director of Food Services Millie Smeltzer, Director of Environmental Services Al Rowe, Director of Sales and Marketing Andrea Peterson and Activities Director Jane Langan. The record establishes that Lingold is available by telephone⁷ on a 24-hour per day basis in case of emergencies or unexpected events. In

³ The record indicates that National Health Management previously operated this facility. The Employer purchased the facility, which was in foreclosure, and hired IntegraCare Corporation to manage the operation.

⁴ According to LPN Rosemarie Burda, a witness called by the Employer, the care provided to the residents primarily involves help with their activities of daily living.

⁵ Lingold is employed by IntegraCare Corporation, the company with which the Employer has a contract to manage the Employer's facility. Lingold also serves as IntegraCare Corporation's Director of Operations. In this capacity, she oversees three facilities, one of which is the Employer herein. The executive directors of the other two facilities report directly to Lingold. On average, Lingold is present at the facility three days per week.

⁶ Cassell is a Registered Nurse.

⁷ Lingold testified that she can be reached via her cellular or home telephone. The record indicates that employees do call Lingold. For instance, a medication aide whose shift was over called Lingold to relieve her. Another medication aide called Lingold to dispute Cassell's disciplinary decision to send her home. In another instance, an LPN called Lingold, in accordance with Lingold's previous instructions, to report that a resident had been sent to the hospital.

addition, Cassell and Smeltzer are also available after hours. Their telephone numbers are posted at the facility.

The Employer operates three shifts, 24 hours per day, seven days per week in the resident care department. Most of the department directors and the business office manager work on the day shift. Lingold is present at the facility about three days per week. Although Lingold is responsible for overall operations of the facility at all times, when she is not present Assistant Executive Director Cassell “assumes the authority to oversee operations”.⁸

II. DUTIES OF THE LPNS AND FOOD SERVICES PRODUCTION SUPERVISOR

A. Resident Care

Assistant Executive Director and Director of Resident Care Services Cassell is responsible for resident care. The resident care staff includes the three LPNs,⁹ resident care aides (“RCAs”) and medication aides. The record establishes that Cassell works on the floor during three shifts per week in the capacity of either an LPN or a medication aide. When Cassell works as an LPN, no other LPN is scheduled on that shift.

Cassell prepares a schedule every two weeks for the resident care staff. Depending on the facility’s census, Cassell has the discretion to schedule additional or fewer RCAs. Since January 2004, the Employer’s practice has been to assign the RCAs to a particular floor for a one-month period after which the RCAs rotate such that they are assigned to the residents on the floor above their current assignments. On dayshift, from 7 a.m. to 3 p.m., the normal staffing consists of one LPN, two to three RCAs and one medication aide. The afternoon shift, from 3 p.m. to 11 p.m., is generally staffed by one LPN, two RCAs and one medication aide. On

⁸ The delegation of authority is set forth in a memo dated March 1, 2004, from Lingold to all staff, residents and visitors. This memo is posted at the facility. The memo also provides that on the 3p.m. to 11p.m. and 11p.m. to 7a.m. shifts, the LPN “assumes the authority in the residence” and that on weekends “the Manager on Duty is in authority”. When the Manager on Duty leaves the residence, the authority is transferred to the nurse on duty.

⁹ The three LPNs at issue are Rosemarie Burda, Stephanie Oden and Catherine McCullough. The record indicates that at the time of the hearing, McCullough had been off on a temporary medical leave for several weeks. During this period, the Employer supplemented its LPN staff with IntegraCare nurses who are not employees of the Employer, and whose status is therefore not at issue herein.

night shift, from 11 p.m. to 7 a.m., one LPN and two RCAs are on duty. The record indicates that at times LPNs will work a 7 a.m. to 7 p.m. shift. In addition, approximately once per week there are shifts where no LPNs are scheduled to work. In these instances, the medication aide is in charge of the building.

The LPNs' primary responsibilities involve resident care. The LPN's shift begins with the report of the LPN or, in some cases, a medication aide from the prior shift. These two individuals then together count narcotics. The LPN on duty completes a daily assignment sheet for the shift which involves recording information posted on the wall of the Wellness Center¹⁰ onto the daily assignment sheet. The posted information includes the name of the RCAs and the floors on which they are working for that month, and the schedule for resident showers, linen changes and toileting/brief changes as well as any appointment for which the resident must be prepared. The break and lunch schedule, which is determined by the floor on which the RCA is working, is also posted. All of this information is transferred by the LPNs onto a daily assignment sheet.

The position summary for the LPN position states that the LPN assists in supervising resident care aides, ensuring care is provided as instructed, and that the LPN "supports the Director of Resident Care Services in ensuring that the Resident Care Department follows all company policies and procedures." The position summary further provides that the LPN supervises RCAs, and assists in planning and coordinating quality care.

The RCAs are responsible for the daily care of residents. In this respect, the RCAs shower and toilet residents, change their bed linens and towels, assist them to the diningroom, and transfer any wheelchair bound residents from their chair to the bed or the toilet. RCAs also complete daily housekeeping in resident rooms and answer resident requests for assistance.¹¹ These duties do not change from day to day.

¹⁰ The Wellness Center is described in the record as the nurses' station.

¹¹ Residents have a call bell in their room which can be answered by intercom from the Wellness Center.

The medication aide prepares and administers medications to half of the residents in the building.¹² The LPN on duty performs this function for the other half of the residents. On dayshift, there is an 8 a.m. and a lunch time medication pass, each of which take approximately one hour. After the medication is passed, the medication aide records the relevant information in the medication book at the Wellness Center. The medication aide also handles treatment such as wound care and breathing treatments. Once these duties are completed, the medication aide then assists the RCAs in their duties for the balance of the shift.

The position summaries for the RCA and the medication aide positions provide that these positions report to the Director of Resident Care Services. In this regard medication aide Bonita Gaines, a witness called by the Employer, testified that while she considers LPNs to be her supervisors as they have the power to tell her to perform tasks, she believes that the Director of Resident Care Services is her “boss”.

B. Food Services Department

The Employer’s Food Services Department operates from about 6:30 a.m. to 7 p.m. each day to provide three meals per day to the residents. The Employer’s food service employees include Food Services Director Smeltzer, Food Services Production Supervisor Faulkner, two cooks, two dishwashers and seven wait staff.¹³ Since September 2003, Food Services Director Millie Smeltzer has had overall responsibility for the facility’s food service. Smeltzer works from 8:30 a.m. to 5:30 p.m., three days per week, and works from 10:30 a.m. to 7 p.m. two days per week. Food Services Production Supervisor Lawrence Faulkner reports to Smeltzer. The record establishes that Smeltzer is responsible for the department’s budget and that she handles the ordering of food, produce, dairy products and paper products. Faulkner orders all bread products three times per week. Faulkner also places the other orders when

¹² The Employer requires its medication aides to complete a one-week training course in passing medications. The record establishes that the medication aide’s starting hourly rate of \$7.00 is 50 cents higher than that of RCAs.

¹³ It appears from the record that the dishwashers and wait staff are trained to perform each other’s job functions.

Smeltzer is not present. Smeltzer schedules the wait staff and dishwashers. Faulkner prepares a schedule for himself and two other cooks and submits it to Smeltzer, who then includes this information in the department schedule. The record indicates that Smeltzer usually performs cooking functions on Sunday and Wednesday evenings.

Faulkner works from 6:30 a.m. to 2:30 p.m., five days per week.¹⁴ Typically, Faulkner is the first food service employee to arrive at the facility. Faulkner begins preparing breakfast. At 7 a.m., two wait staff employees arrive, followed by a dishwasher at approximately 7:30 a.m. Breakfast is served at the facility from about 7:30 a.m. to 9 a.m. in the main diningroom. Faulkner prepares a cart to be taken to the special needs diningroom on the third floor. After breakfast, Faulkner begins preparing for lunch.

The position summary for the Executive Chef/Production Supervisor/Lead Cook states that the position is:

[r]esponsible for preparing residence meals in accordance with planned menus and with sanitary regulations. Supervises kitchen personnel and kitchen production in conjunction with Food Services Director. Assists with the ordering and purchasing of food and food service supplies. Reviews dietary requirements of the residents and assists in meeting prescribed dietary restrictions.

In addition, Faulkner's position summary contains a list of essential functions, including meal preparation and assistance in daily or scheduled cleaning duties in the kitchen/dining area, supervising kitchen personnel, ensuring that all IntegraCare policies and procedures are maintained; overseeing the kitchen production; meeting with food service personnel as needed to identify and correct problem areas and/or improvement of services; and conducting and/or attending required in-services and orientations.

¹⁴ Faulkner, Smeltzer and the two other cooks work a three-week rotating schedule such that Faulkner and Smeltzer are never scheduled to have the same day off and there are only two days when neither is present for a four-hour period. For those periods, the cook on duty is in charge of the department.

Faulkner, an executive chef, estimated that he spends approximately 75 percent of his time cooking. The balance of his time is spent cleaning and checking the work performed by the other food service employees and instructing them as to their duties.

The Employer maintains separate task lists for the dishwasher, wait staff and cooks.¹⁵ The duties on these lists do not change. Employees check off each duty performed and initial the sheet. The record indicates that Faulkner checks the kitchen and dining rooms for cleanliness and will direct the dishwasher and wait staff on duty to perform extra tasks such as vacuuming under tables, resetting the table and cleaning the dish machine and under the ice machine. Faulkner also conveys information to wait staff regarding the seating arrangements of residents, resident arrivals to and departures from the facility, and any changes in residents' dietary needs.

If a resident is dissatisfied with a meal, the wait staff will attempt to solve the problem by arranging a substitution and will then inform Faulkner of this arrangement. If they are unable to satisfy the resident, Faulkner will attempt to solve the problem. One of Faulkner's duties as production supervisor involves entering the diningroom to speak to residents in an effort to obtain feedback about their likes and dislikes.¹⁶

Food service employees are required to complete production sheets, food temperature logs, refrigeration temperature logs, and dishwasher pH logs in the course of their duties. Smeltzer and Faulkner ensure that these logs are properly maintained, and that the duties on the task lists have been performed. Faulkner testified that if a task were not properly performed, he would show the employee how to correctly perform the duty. If the employee continued to

¹⁵ It appears that Faulkner worked with IntegraCare's Corporate Culinary Services Director Linda Slokenbergs while she served as the Employer's Acting Food Services Director, in 2002 to create these task lists. The Corporate Culinary Services Director provides assistance to food service departments with such areas as menu and event planning. Slokenbergs has no supervisory authority over Food Services Director Smeltzer or any of the food service employees at the Employer's facility.

¹⁶ This is referred to in the record as "table touch". All of the cooks are required to perform table touch.

perform inadequately, Smeltzer would determine whether to address the situation with additional training or discipline.

Faulkner began working at this facility as a cook for one of the Employer's predecessors. He was promoted to Production Supervisor and then to Food Services Director. Faulkner voluntarily stepped down from the Food Services Director position in about August 2002. The position was then filled by an Acting Food Services Director and two short-term Food Services Directors. From May to September 2003, the facility was without a permanent food services director. At that time, Faulkner served as the Acting Food Services Director.¹⁷ When Smeltzer became employed, Faulkner introduced her to the employees and showed her the workings of the food service operation. Since September 2003, Smeltzer has handled the ordering of most products and the scheduling of employees. Smeltzer has also handled requests for time off, and other personnel matters such as the hiring, firing and discipline of employees.

The record indicates that two wait staff employees have been hired since Smeltzer became the Food Services Director. Faulkner sat in on the interview of one wait staff applicant. Faulkner testified that at the time Smeltzer was still rather new to her job. Consequently, she invited Faulkner to attend the interview because he was more familiar with the wait staff job description. Smeltzer decided to hire the individual, apparently without input from Faulkner. After 90 days Smeltzer also converted this employee to regular status without Faulkner's input. The second applicant for a wait staff position had previously been employed at the facility by one of the Employer's predecessors. This applicant requested to speak with Faulkner since he had been in charge when she was employed. Faulkner referred the applicant to Smeltzer, recommending to Smeltzer that she not be rehired. Smeltzer interviewed the applicant without Faulkner and decided to hire her.

¹⁷ Faulkner received a total of \$1,000 in bonuses for serving in this capacity.

It appears from the record that Smeltzer has discharged one food service employee for failing to report to work without calling off. Prior to the discharge, Faulkner reported to Smeltzer that this employee had been arriving late to work and advised Smeltzer to check the employee's timecards. Smeltzer did so and issued a verbal warning to this employee for lateness.

For the most recent evaluation, Smeltzer completed the evaluation of the food service department employees based on both information from Faulkner and from her assessment of the employees' work between September and December 2003. Smeltzer testified that she asked Faulkner about the performance of the food service employees between January and August 2003. Smeltzer conducted evaluation meetings with each food service employee. Faulkner did not sit in on any of these meetings. Smeltzer also evaluated Faulkner.

The record indicates that Smeltzer and Faulkner share an office.¹⁸ Faulkner's nametag lists his title as Production Supervisor. Faulkner is paid a wage rate of \$14 per hour. The wage range of the two other cooks is between \$7 and \$11 per hour.¹⁹

C. Policies and Procedures Common Among Departments

The Employer has a call off procedure whereby certain individuals are authorized to take call offs. In the resident care department, Assistant Executive Director Cassell and the LPNs are authorized to take a call off. In the food services department, Millie Smeltzer and Faulkner are the authorized individuals to which call offs must be directed. The authorized individual completes a staff call off report form, which requires the date, time and name of the staff person reporting off, and his or her day and shift. The person taking the call off then signs the form and submits it to the department director who signs the form on a line next to the words "Supervisor Acknowledgement". The record indicates that the supervisor acknowledgement is required for

¹⁸ The record reveals that other cooks have keys to this office, and the former administrator gave one wait staff employee a key to the office.

¹⁹ Although Faulkner believed his wage rate was higher due to longevity with the Employer and its predecessors, IntegraCare Corporation's Human Resources Administrator, Judy Muller, testified that Faulkner is paid more than other cooks because of his additional supervisory duties.

payroll purposes inasmuch as the supervisor who signs to acknowledge the call off determines how the employee will be paid (i.e. personal, sick or vacation day).

Call offs are initially taken by one of the Employer's receptionists who first refers such calls from resident care and food service staff to Cassell and Smeltzer, respectively. If these individuals are not in the building, the call offs are directed to the LPNs or Faulkner. The record reveals that there is no procedure for replacing call offs and those employees contacted to replace a call off are not mandated to come to work. It appears that LPNs and Faulkner first ask the employees on duty to remain on duty for a few extra hours. The only other option is to reach an off duty employee. A list with the names and telephone numbers of all employees is posted at the facility. In resident care, other than those on duty, there are only five to six other RCAs to call. In food service, Faulkner can call three other employees for dishwasher and cook positions and five other employees for wait staff positions. If a call off cannot be filled, Faulkner decides how the necessary work will be performed. In this regard, the dishwasher may be assigned to assist wait staff and the cook on duty will handle the dishes.

The Employer has a designated "Manager on Duty" on holidays and weekends. The Manager on Duty is charged with overseeing the entire facility. The record reveals that LPNs do not serve as Manager on Duty. However, Faulkner has served in this capacity.

Lingold testified that the Employer must have a "supervisory" presence in the building on Saturday and Sundays for a minimum of four hours per day. The person designated as Manager on Duty is present to support the staff, walk the grounds and to give tours of the facility. Generally, the Manager on Duty works from 10 or 11 a.m. to 2 or 3 p.m. There is no manager on duty other than during these hours.

Employee evaluations are performed in December of each year. IntegraCare's Human Resources Department created a performance appraisal form. Copies of the form are maintained in the office of the Executive Director and must be updated yearly in order for employees to receive a salary increase. Employees are rated on a scale from one to four on

various key performance factors and key teamwork factors to obtain an overall score. The score determines the employees' yearly raise.²⁰

The performance evaluations of the RCAs and the medication aides will be completed by Assistant Executive Director Cassell.²¹ The record indicates that, in the past, LPNs have been asked for their observations about the performance of RCAs and medication aides, but have not been asked for recommendations as to scoring the performance or teamwork factors. The LPNs do not review evaluations of aides and do not participate in the evaluation meeting with the employee.²²

As to the handling of employee grievances, the record contains one example of an LPN intervening in a disagreement between two RCAs. After the RCAs became loud, LPN Burda separated the two and sent them off the floor for 10 to 15 minutes. Burda considered the time off the floor as the RCAs' break time.

The Employer utilizes IntegraCare Corporation's employee counseling form to document discipline. Neither the LPNs nor Faulkner have completed one of these forms during Lingold's tenure as Executive Director. Lingold testified that she is involved in any disciplinary action at the facility.

The record contains four instances of discipline, three of which occurred in the Resident Care Department and one of which occurred in the Food Services Department. In one case, a temporary medication aide was sent to the facility by IntegraCare to fill in for a call off. Apparently, the medication aide did not perform her duties satisfactorily. LPN Burda was asked by Lingold to document the medication aide's performance. Burda's report indicates that the medication aide became upset during the shift and repeatedly stated that she could not perform

²⁰ IntegraCare's Human Resources Department establishes the entry level and maximum wage rate for every job classification at the Employer's facility based on annual wage surveys.

²¹ Cassell has not yet completed evaluations as she began her employment in February 2004. The former Administrator of the facility previously performed the evaluations for resident care staff.

²² In addition, LPNs do not have access to the personnel files of other employees.

the duties. After overhearing the medication aide say that she would not be coming back to the facility, Burda asked her at the end of the shift if she would return the next day. The medication aide responded negatively, and has not returned to the facility. The Employer asserts that based on Burda's report and recommendation, the medication aide's employment as a substitute was terminated and that she was terminated from employment with IntegraCare.

The second disciplinary action discussed in the record involved the discharge of an RCA for resident neglect. In this case, the resident complained to LPN Oden that the RCA refused to toilet her or provide her a receptacle in which to vomit. Oden reported the complaint to Lingold. Lingold directed Oden to submit a written statement of what she was told by the resident. Thereafter, Lingold thoroughly investigated the matter by interviewing the resident, the resident's family and the resident's roommate. Ultimately, the RCA was discharged. Oden testified that she was not present when this decision was made and that she was not asked for her opinion as to the level of discipline to be issued.

The third example of discipline in the record by an LPN involved an oral instruction by LPN Burda to an RCA. When Burda learned that a resident was left uncovered in bed, she advised the RCA involved that the resident's dignity must be maintained. Burda did not complete an employee counseling form to indicate that a verbal warning had been issued.

As noted above, Smeltzer terminated a food service employee for failing to report to work without calling off. Faulkner was not involved in the decision to discharge this employee. The termination notice refers to a previous oral warning by Smeltzer for tardiness. That warning occurred after Faulkner advised Smeltzer to check the employee's timecard, as she had been late to work.

IntegraCare's Human Resources Administrator presented a one-day training program entitled "Supervisory Essentials" at the facility on May 30, 2003. All of the department directors attended, as well as the LPNs. The record indicates that Faulkner was invited but was unable to attend on the date the program was presented. The former administrator and the Human Resources Administrator decided which employees should be invited to attend the training.

The Employer conducts management meetings on weekdays at 9 a.m. to discuss operational concerns, including the census, upcoming events, any change in residents' condition and any construction or other occurrences at the facility. Each of the five department directors and the business office manager report on daily occurrences in their departments. The record establishes that LPNs do not attend these meetings. Until March 2004, when Director of Food Services Smeltzer was unavailable Production Supervisor Lawrence Faulkner attended these meetings. Faulkner testified that he stopped attending the meetings in March 2004 because, after three consecutive days of going to the meetings at the appointed time, he was told that Lingold was not in or might not be in. Faulkner advised the business office manager that he had work to do in the kitchen and that she should page him if he was needed. After apparently not being paged, Faulkner felt excluded and has not thereafter attended any morning management meetings. According to Faulkner, he has not been directed to resume his attendance in Smeltzer's absence.

III. SUPERVISORY STATUS

A. LPNs

As previously stated, the Employer contends that the LPNs at the Employer's facility are supervisors within the meaning of the Act. In so asserting, the Employer contends in its brief that the LPNs have the authority to effectively recommend discipline and discharge as well as the authority to assign, reward, adjust grievances and responsibly direct employees.²³ The Employer also argues that when the Executive Director, Assistant Executive Director, or the Manager on Duty are absent, the LPN is responsible for operation of the facility. Finally, the Employer also relies on secondary indicia of supervisory status. Specifically, the Employer contends that the LPNs as well as other employees consider LPNs to be supervisors, that LPNs are invited to management meetings, and that LPNs' hourly wage rate is substantially higher

²³ At the hearing, the Employer asserted that LPNs possess the authority to exercise, either directly or by effective recommendation, all of the indicia listed in Section 2(11) of the Act, except the authority to lay off and recall employees. I have addressed the supervisory indicia argued in the Employer's brief in this decision. However, I note there is no record evidence that the LPNs have the authority to hire, transfer, suspend, lay off, recall or promote employees.

than that of other employees. The Petitioner, on the other hand, asserts that the LPNs are not supervisors within the meaning of the Act under the analysis required by NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706 (2001). As described in more detail below, I find that the Employer has not met its burden of establishing that the LPNs are supervisors within the meaning of the Act, and therefore, I shall include them in the unit found appropriate herein in Case 6-RC-12338.

Section 2(11) of the Act defines the term supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., supra at 710–712; Michigan Masonic Home, 332 NLRB 1409 (2000). This is a substantial burden in light of the exclusion of supervisors from the protection of the Act. The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g. Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, at 1409. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB

193 (1991). In addition, supervisory authority will not be determined from a written job description, but must be determined by actual practice. The grant of authority on paper which is illusory in practice is not determinative of supervisory status. Beverly Health and Rehabilitation, 335 NLRB 635, 665 (2001); Pine Manor Nursing Home, Inc., 238 NLRB 1654, 1655 (1978).²⁴

Moreover, the issue of supervisory status is highly fact-specific and job duties vary; thus, per se rules designating classifications as always or never supervisory are generally inappropriate. Brusco Tug & Barge Co., 247 F.3d 273, 276 (D.C. Cir. 2001).

The Board and the courts have observed that the Act sets forth a three-pronged test for determining whether an individual is a supervisor within the meaning of the Act.

Employees are statutory supervisors if (1) they hold the authority to engage in any 1 of the 12 listed supervisory functions, (2) their 'exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment,' and (3) their authority is held 'in the interest of the employer.'

Franklin Home Health Agency, 337 NLRB 826, 829 (2002), citing NLRB v. Kentucky River Community Care, Inc., supra.

The exercise of "some supervisory authority in a merely routine, clerical, perfunctory, or sporadic manner," or through giving "some instructions or minor orders to other employees" does not confer supervisory status. Franklin Home Health Agency, supra at 829, citing Chicago Metallic Corp., 273 NLRB 1677, 1689 (1985).

With regard to the use of independent judgment, it is difficult to analyze whether individuals alleged to be supervisors have the authority to responsibly direct employees within the meaning of Section 2(11) of the Act, particularly in the health care field, since the Board, prior to Kentucky River Community Care, Inc., held that employees are not using independent judgment when they utilize ordinary professional judgment in directing less-skilled employees in accordance with employer-specified standards. This view was rejected by the Supreme Court

²⁴ The LPNs' position summary is internally inconsistent in that the essential function of supervising RCAs is set forth in the summary portion of the document as the duty to assist in supervising the aides.

in Kentucky River Community Care, Inc., supra at 713, finding that this categorical exclusion was overly broad.

However, the Supreme Court did accept two aspects of the Board's interpretation of independent judgment. First, the Court agreed that the term "independent judgment" is ambiguous, and that many nominally supervisory functions may be performed without the exercise of such a degree of judgment or discretion as would warrant a finding of supervisory status. Second, the Court found that detailed orders and directions from the employer may reduce the degree of judgment exercised below the statutory threshold for supervisory status. Id. at 712–714. The Court allowed that the Board has the discretion to make the determination as to whether the degree of judgment utilized reaches the level of independent judgment sufficient to warrant a finding of supervisory status. Id.

The Supreme Court did not find that all nurses are supervisors in Kentucky River Community Care, Inc.. Rather, it left it to the Board to analyze the facts of each individual case to determine whether, in light of the findings in Kentucky River Community Care, Inc., the individuals at issue utilize independent judgment. If the judgment being analyzed is constrained by employer-specified standards, or higher authorities have not delegated power to the individuals to make independent decisions, then the judgment may well be routine and not considered supervisory within the meaning of the Act.

Upon the entire record, and in light of the direction of Kentucky River Community Care, Inc., I have concluded that the LPNs in this case are not supervisors within the meaning of the Act.

The record establishes, as contended by the Employer, that the LPNs are the highest-ranking persons present on two shifts during the week and on weekends. However, the record also establishes that the Executive Director and the Assistant Executive Director are always available by telephone. In these circumstances, I conclude that the fact the LPNs are nominally "in charge" of the facility during substantial periods of time is insufficient to establish supervisory

status. Lakeview Health Center, 308 NLRB 75, 79 (1992); Waverly-Cedar Falls Health Care, 297 NLRB 390, 393 (1989).

The record establishes that LPNs record on the daily assignment sheet the duties to be performed by the RCAs and the medication aides. However, the record fails to establish that the LPNs exercise independent judgment and discretion in assigning such duties to and directing the work of the RCAs and medication aides. Rather, the record establishes that the RCAs and medication aides have standard duties for each resident which do not vary from day to day. The duties involve routine aspects of resident care such as showering, toileting and dressing residents, and other routine tasks.²⁵ The record indicates that the Assistant Executive Director completes the master schedule which lists the shift and days that the resident care department employees work. In addition, each resident's shower, linen change and toileting/brief change is posted on a schedule at the Wellness Center. The LPN transfers this information to the daily assignment sheet. Accordingly, I conclude that the LPNs do not exercise supervisory authority in assigning and directing the work of the aides. Northern Montana Health Care Center, 324 NLRB 752, 753 (1997); Providence Hospital, 320 NLRB 717 (1996).

The record establishes that LPNs do not have the authority to modify the break and lunch schedules of the RCAs and medication aides as the established procedure is that the aides working on the third and fourth floors take their lunch breaks first, followed by the aides working on the other floors.

The Employer asserts that LPNs have the authority to recommend discipline of RCAs and medication aides. As noted herein, the one discharge of an RCA for resident neglect was effectuated after a thorough investigation by Executive Director Lingold. Although the LPN initially reported what she had been told by the resident, the LPN played no further role in the

²⁵ The record establishes that employees (both resident care and food service) are expected to follow procedures in the Corporate Operating Standards Manual, which sets forth most procedures and policies in great detail.

disciplinary process. The Employer also contends that a temporary aide was terminated from her employment²⁶ based on an LPN's report and recommendation. The statement Lingold directed the LPN to submit regarding the aide's performance indicates that it was the aide who informed the LPN that she would not return to the facility. Moreover, even assuming that the LPN recommended that this aide not be assigned to the Employer's facility, this would not establish supervisory authority. See Crenulated Company, Ltd., 308 NLRB 1216 (1992)

Thus, the record indicates that although LPNs can report incidents to determine the type of offense involved, they do not determine the appropriate penalty for the infraction, and no discipline could be imposed without the involvement of the Executive Director. In these circumstances, I conclude that the role the LPNs play with respect to discipline is essentially reportorial in nature and is insufficient to confer supervisory status. Accordingly, the record fails to establish that the LPNs have authority to issue discipline that independently results in adverse action to the RCAs and medication aides without further review by higher authority. Washington Nursing Home, 321 NLRB 366, fn. 4 (1996).

As to recommending rewards for employees, the record contains no evidence that LPNs reward employees with anything other than oral praise. The Employer contends that the LPNs reward aides through evaluations, but the record establishes that LPNs do not perform evaluations. Rather, Cassell is responsible for preparing performance evaluations and for reviewing them with employees. The record indicates that the former Administrator asked LPNs for observations, but did not request recommendations for numerical scores, nor is there any evidence that she shared the completed evaluations with LPNs for their review. Moreover, the record establishes that LPNs do not have access to employees' personnel files. Thus, I do not find that LPNs can reward employees through the evaluation process.

²⁶ The Employer states that the temporary medication aide was terminated from both her employment at the Employer's facility and from IntegraCare based on the LPN's recommendation. The record is unclear that the aide was discharged from IntegraCare in that Lingold's testimony was that the LPN felt the aide should not return to the facility and that the aide was thereafter discharged.

The record establishes that LPNs may have the authority to intervene in minor disputes among aides, as the record contains one instance of an LPN separating two aides whose disagreement became loud. However, there is no evidence that the LPNs play more than this minor role. In these circumstances, I conclude that the record evidence is insufficient to establish that the LPNs have the authority to independently adjust grievances. Northern Montana Health Care Center, supra at 754; Riverchase Health Care Center, 304 NLRB 861, 865 (1991).²⁷

The Employer asserts that LPNs are viewed as supervisors at the facility, that they attend management meetings and that they earn more than other employees. LPNs are among the Employer's more skilled medical personnel, which accounts for the fact that their wage range is higher than those of the less skilled aides. As noted previously, LPNs do not attend the daily management meetings at the facility as those are attended by Cassell. The LPNs did however attend a one-day supervisory training in 2003. As to being viewed as supervisors, the record indicates that LPNs do monitor the routine care of residents and will direct employees in this regard. In this sense they may be viewed as supervisors, but not as the boss. However, these secondary indicia do not confer supervisory status that is otherwise not established.

In this regard, non-statutory indicia can be used as background evidence on the question of supervisory status but are not themselves dispositive of the issue in the absence of evidence indicating the existence of one of the statutory indicia of supervisory status. Ken-Crest Services, 335 NLRB 777, 779 (2001); Training School of Vineland, 332 NLRB 1412, fn. 3

²⁷ Passavant Retirement & Health Center v. NLRB, 149 F.3d 243 (3d Cir. 1998), relied upon by the Employer in its brief, involved the nurses' resolution of complaints which could ripen into grievances cognizable under the collective-bargaining agreement covering the CNAs. In contrast, in the instant case, the LPNs are merely intervening in disputes, rather than informally resolving disputes that would constitute contractual grievances. In this regard, the court emphasized that the definition of "grievance" contained in the collective-bargaining agreement in that case was very broad and the agreement included sections pertaining to daily assignments, break times, lunch breaks and the like, matters which the nurses in Passavant could resolve and adjust when disputes arose among the aides with respect to these matters. In the instant case, it does not appear that these types of minor problems arise, especially since the lunch breaks appear to be fixed. See Ken-Crest Services, 335 NLRB 777 (2001), wherein the Board distinguished Passavant on the ground that the record therein indicated that the program directors alleged to be supervisors only offered advice and suggestions regarding personality conflicts.

(2000); Chrome Deposit Corp., 323 NLRB 961, 963 fn. 9 (1997). It is well settled that supervisory status cannot be proven through secondary indicia alone, without the presence of any one of the statutory indicia. North Jersey Newspaper Co., 322 NLRB 394 (1996); Billows Electric Supply, 311 NLRB 878, fn. 2 (1993).

Even when taking call offs, the LPNs follow the defined procedure of completing the staff call off report which is submitted to higher authority for “Supervisor Acknowledgement”. LPNs then request, but cannot mandate, volunteers to stay on past their shift, followed by calling off duty employees at home to request that they fill in. The exercise of such limited authority does not involve independent judgment or discretion and is therefore insufficient to establish supervisory status. Northern Montana Health Care Center, supra at 753, fn. 9; Lakeview Health Center, supra at 79.

Accordingly, I find that the LPNs are not statutory supervisors, and I shall include them in the unit found appropriate herein.

B. Food Services Production Supervisor

The Employer asserts that Faulkner is a supervisory employee within the meaning of the Act based on his authority to effectively recommend the hiring and discipline of employees. The Employer also asserts that Faulkner has authority to provide effective recommendations with respect to various employees’ annual performance evaluations resulting in rewards to employees, and to responsibly direct and assign work to employees.

The Employer also relies on secondary indicia of supervisory status. Specifically, the Employer asserts that Faulkner receives significantly higher pay than other food service employees, is regarded by himself and others as a supervisor, attends management meetings and wears a name tag identifying him as a supervisor.

The record contains no evidence that Faulkner has hired,²⁸ transferred, suspended, laid off, recalled, promoted, discharged employees or that he has adjusted their grievances. As to

²⁸ As noted, Faulkner sat in on one interview but did not participate in the decision to hire the applicant. Likewise, Faulkner did not participate in the decision to convert this employee to a regular employee after

the discipline of employees, the record indicates that Smeltzer determines discipline, and that Faulkner's involvement has been limited to advising Smeltzer that she should check one employee's timecard, as the employee had been arriving to work late. Thereafter, Smeltzer issued a verbal warning to the employee. Smeltzer subsequently terminated the same employee. Smeltzer issued and signed the termination action, which was approved by the Executive Director and the Human Resources Administrator from IntegraCare Corporation.

The record shows that Faulkner does direct and assign work to three or four food service employees (generally one dishwasher and two to three wait staff) working on his shift. Initially, the record establishes that these employees have a prepared task list of the items they must perform each day. As necessary, Faulkner provides further instruction to ensure the cleanliness of the department and that the Employer's standards are met. For example, Faulkner has instructed wait staff to reset a table if the table setting is improper or to vacuum under tables in the dining room. Faulkner has also instructed dishwashers to clean the dish machine or under the ice machine. It appears that Faulkner also answer questions about food preparation. The tasks on the prepared task list and the additional tasks assigned by Faulkner are routine and do not vary greatly from day to day. Faulkner also checks production logs and other documentation logs.

Such direction of other employees stems from Faulkner's superior training, skill and experience as a chef, and is incidental to carrying out his tasks as lead cook. This type of direction does not establish the authority to "responsibly direct" other employees as interpreted by the Board. See, e.g. Mt. Sinai Hospital, 331 NLRB 895, 902 (2000). The Board in Providence Hospital, 320 NLRB 717 (1996), noted that there are no hard and fast rules as to the application of the indicia of assignment and responsibly to direct; instead, each case turns on its own particular facts. The Board said, "Clearly, not all assignments and directions given by an

her 90-day probationary period. In addition, Faulkner recommended that another applicant who formerly worked for the Employer's predecessor not be rehired. Smeltzer interviewed this applicant and decided to hire her, contrary to Faulkner's recommendation.

employee involve the exercise of supervisory authority. As succinctly stated by the Fifth Circuit in NLRB v. Security Guard Service, 384 F.2d 143, 151 (5th Cir. 1967):

If any authority over someone else, no matter how insignificant or infrequent, made an employee a supervisor, our industrial composite would be predominantly supervisory. Every order-giver is not a supervisor. Even the traffic director tells the president of the company where to park his car.

Consequently, the Board analyzes each case in order to differentiate between the exercise of independent judgment and the giving of routine instructions, between effective recommendation and forceful suggestion, and between the appearance of supervision and supervision in fact.” Id. at 725, citing McCullough Environmental Services, 306 NLRB 565 (1992), enf. denied. 5 F.3^d 923 (5th Cir. 1993).

In its brief, the Employer relies on several cases in support of its contention that Faulkner should be found to be a statutory supervisor. In each of those cases, the chefs in question had greater authority than Faulkner. For instance, in Piccadily Cafeterias, 231 NLRB 1302 (1977) the chefs to whom statements violating Section 8(a)(1) of the Act were attributed were, for 10½ hours per day on average, in full immediate charge of up to ten employees engaged in the vital functions of the company’s operation. Here, Faulkner works with a maximum of four employees. Faulkner always works on day shift, and he is always the first employee in the kitchen. Faulkner generally arrives ½ hour before any other employee and is present at the facility two to four hours before Smeltzer arrives. During the time Faulkner is working at the facility when Smeltzer is not present, there is no indication that he performs duties indicative of statutory supervisory authority

In Sara Neuman Nursing Home, 270 NLRB 663 (1984), the food service supervisors were found to be supervisors within the meaning of the Act because they possessed authorities, unlike Faulkner, to independently issue verbal and written

warnings and to send employees home from work with loss of pay. The food service supervisors there also authorized overtime, permitted employees to leave early and attended weekly supervisory meetings where the performance and problems of food service workers was discussed.

The Employer also asserts that Faulkner, like the chefs in Bowdoin College, 190 NLRB 193 (1971), makes effective recommendations regarding hiring, discipline and performance evaluation. However, the record does not establish that Faulkner makes effective recommendations in these areas. As noted, in one instance Faulkner attended an interview but did not participate in the hiring decision, and in another case, Faulkner's recommendation that a former employee not be rehired was not followed. With respect to discipline, Faulkner reported an infraction to Food Services Director Smeltzer but did not take part in the issuance of discipline. With respect to evaluations, while Faulkner may have provided input as to the portion of the evaluation period prior to Smeltzer's employment, the record establishes that Faulkner does not complete the performance evaluation forms, rate employees' performance or meet with employees to discuss their performance.

Finally, the sous chefs found to be supervisors in Pioneer Hotel, 276 NLRB 694 (1985), had the authority to reprimand employees, send employees home, grant overtime and grant employees time off to go home early. The record herein does not establish that Faulkner has similar authority.

Based on the above and the record as a whole, I find that Production Supervisor Lawrence Faulkner is not a supervisor within the meaning of the Act.²⁹ Accordingly, I shall include him in the unit found appropriate herein in Case 6-RC-12333.

²⁹ As noted in discussing the LPNs, secondary indicia relied on by the Employer is not proof of Section 2(11) status in the absence of any of the primary supervisory indicia.

IV. FINDINGS AND CONCLUSIONS

Based upon the entire record in this matter and in accordance with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.³⁰
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

³⁰ I note the Employer's arguments regarding the Hearing Officer's rulings at footnotes 15 and 21 of its brief. Initially, the Employer excepts to the Hearing Officer's discussion of hearing issues during off the record conversations. The Employer cites the Hearing Officer's refusal to admit Employer Exhibit 5 containing over 20 documents and the subsequent off the record discussion regarding this ruling. The record reflects that all of the documents in Employer Exhibit 5 were admitted into the record, but were renumbered as Employer Exhibits 6 through 23 to separate the documents into individual exhibits. Moreover, I have reviewed the transcript and I do not agree that the Hearing Officer required evidentiary discussions or decisions to be conducted off the record or that the Employer was denied its due process rights.

I have also considered the Employer's argument regarding the Hearing Officer's decision to bar the testimony of former Food Service Director Leethia Haddad regarding Lawrence Faulkner's alleged supervisory duties, while employed by one of the Employer's predecessors. Again, I cannot conclude that the Hearing Officer's ruling in this regard constituted prejudicial error. Ms. Haddad was employed by a different employer and retired from her employment at the facility in 1996 or 1997, at least six to seven years prior to the relevant time frame. I note that the current Executive Director, Food Service Director, a dishwasher and a wait staff employee gave testimony regarding Faulkner's current duties. Faulkner, himself, was called as a witness by the Petitioner regarding his status. These individuals are in the best position to offer the most relevant testimony as to Faulkner's current duties and responsibilities, and any testimony regarding his duties and responsibilities several years ago, while employed by a different employer, would not be sufficient to alter any conclusion reached as to Faulkner's current status. Finally, I note that the Employer did not exercise its right to take a special appeal from any of the Hearing Officer's rulings in this matter.

In Case 6-RC-12333:

All full-time and regular part-time employees, including the Executive Chef/Production Supervisor/Lead Cook, and receptionists employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding all licensed practical nurses, department directors, business office clerical employees and guards, professional employees and all other supervisors as defined in the Act, and all other employees.

In Case 6-RC-12338:

All full-time and regular part-time licensed practical nurses employed by the Employer at its Pittsburgh, Pennsylvania, facility; excluding all office clerical employees, service and maintenance employees, IntegraCare nurses, and guards, professional employees and supervisors as defined in the Act, and all other employees.

V. DIRECTION OF ELECTIONS

The National Labor Relations Board will conduct secret ballot elections among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by District 1199P, Service Employees International Union, AFL-CIO, CLC. The date, time and place of the elections will be specified in the Notices of Election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the elections are those in the units who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as

well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit Lists of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the elections should have access to the lists of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). These lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). Upon receipt of the lists, I will make it available to all parties to the election.

To be timely filed, the lists must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **June 4, 2004**. No extension of time to file these lists will be granted, except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by facsimile transmission at 412/395-5986. Since the lists will be

made available to all parties to the elections, please furnish a total of **two (2)** copies of each list, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Elections provided by the Board in areas conspicuous to potential voters for a minimum of three (3) full working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) full working days prior to 12:01 a.m. of the day of the elections if it has not received copies of the election notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing objections based on non-posting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST (EDT), on **June 11, 2004**. The request may **not** be filed by facsimile.

The undersigned having duly considered the matter and deeming it no longer necessary that these cases be consolidated in order to effectuate the purposes of the Act,

IT IS HEREBY ORDERED, that these cases be, and they hereby are, severed from each other for further processing.

Dated: May 28, 2004

/s/ Gerald Kobell

Gerald Kobell , Regional Director

NATIONAL LABOR RELATIONS BOARD
Region Six
Room 1501, 1000 Liberty Avenue
Pittsburgh, PA 15222